TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE

CORRECTED FISCAL NOTE

HB 833 - SB 842

March 22, 2015

SUMMARY OF BILL: Enacts the Primacy and Reclamation Act of Tennessee, that implements multiple provisions related to coal mining, including but not limited to the following: a requirement for the Department of Environment and Conservation (TDEC) to serve as the state regulatory authority for surface coal mining and reclamation operations; a requirement for TDEC to adopt rules by emergency rulemaking within 90 days of the effective date of the act; designation of the Board of Water Quality, Oil and Gas as the Board of Natural Resources; addition of two members to the Board representing stakeholders in surface coal mining, with a requirement the Board promulgates rules consistent with federal law and regulations; a requirement for the state to seek primacy after bill is enacted and the Governor to seek any federal funding available; the creation of several Class E Felony offenses for violations of certain provisions of this Act; and declaration that this Act takes effect upon becoming a law for purposes of rulemaking, and eight months after the state is granted primacy over the regulation of surface coal mining and reclamation operations within its territorial boundaries for all other purposes.

ESTIMATED FISCAL IMPACT:

On March 9, 2015, a fiscal note was issued for this bill including the following estimated impact:

Increase State Revenue –
$1,491,500/Coal Mining Protection Fund/FY17-18
$1,667,100/Coal Mining Protection Fund/FY18-19 and Subsequent Years

Increase State Expenditures –
$605,400/General Fund/FY15-16
$1,618,600/General Fund/FY16-17
$3,188,700/General Fund/FY17-18
$2,772,200/General Fund/FY18-19 and Subsequent Years
*$17,000/Highest Projected Cost of Next 10 Years Beginning With FY18-19/Incarceration**

Increase Federal Expenditures –
$1,315,900/FY17-18 and Subsequent Years

Based on additional information received from the Department of Environment and Conservation, the fiscal impact has been revised as follows:

(CORRECTED)

Increase State Revenue –
$1,266,100/Coal Mining Protection Fund/FY17-18
$1,216,100/Coal Mining Protection Fund/FY18-19 and Subsequent Years

Increase State Expenditures –
$522,800/General Fund/FY15-16
$1,270,300/General Fund/FY16-17
$2,498,800/General Fund/FY17-18
$2,158,100/General Fund/FY18-19 and Subsequent Years
$17,000/Highest Projected Cost of Next 10 Years Beginning With FY18-19/Incarceration*

Increase Federal Expenditures –
$1,145,800/FY17-18
$975,500/FY18-19 and Subsequent Years

Assumptions relative to TDEC:

- According to TDEC, this bill will require the Department to establish a program eligible for primacy and to regulate coal surface mining activities and the surface effects of underground mining.
- Currently, the Office of Surface Mining, Reclamation, and Enforcement (OSM) within the Department of the Interior regulates surface coal mining and reclamation activities in Tennessee.
- Federal law (30 C.F.R.731.12 and 731.15) requires a state to demonstrate the capacity to implement, administer, and enforce the Surface Mining Control and Reclamation Act (SMCRA) and federal rules implementing SMCRA including sufficient legal, technical, and administrative personnel and funding for the program.
- According to TDEC, two new board members will be added to the Board of Natural Resources, resulting in a recurring increase in state expenditures of $2,240 ($280 per meeting x 4 meetings x 2 members) in FY17-18 and subsequent years; the increase in state expenditures in FY16-17 is estimated to be $1,120 ($280 per meeting x 2 meetings x 2 members).
- This bill establishes the fee schedule, including a permit fee and an acreage fee, for permit applications in Section 59-8-107. Based on the OSM annual reports, it is estimated that TDEC will receive three new permit applications per year with fee revenue of $3,850 each, nine renewals with fee revenue of $500 each, eight transfer applications with fee revenue of $350 each, no exploration permit applications, 1 significant revision application with fee revenue of $2,000 each, and 104 insignificant revision applications or incidental boundary revisions with fee revenue of $750 each, resulting in total annual application fee revenue of $98,850 beginning in FY18-19 [(3 x $3,850) + (9 x $500) + (8 x $350) + (1 x $2,000) + (104 x $750)]. The department

estimates that FY17-18 revenue will be $49,425 based on the uncertainty of the actual effective date of primacy.

- TDEC reports that the average issued acreage from Federal FY08-09 through Federal FY12-13 was 960. The Department estimates that twice the number of acres were submitted with permits and that the acreage was not reclaimed, resulting in $76,800 [(960 x $40) x 2] in acreage fee revenue annually beginning in FY18-19; and that FY17-18 revenue will be $38,400 because of the uncertainty of the actual effective date of primacy.
- Based on severance tax collections reported by the Department of Revenue and coal production data published by the U.S. Energy Information Administration, it is estimated that 1,000,000 tons of coal will be severed annually and that half of the coal will be from surface mining operations and half will be from underground operations, resulting in $65,000 in annual severance tax revenue beginning in FY18-19 [(500,000 tons x $0.09 per ton) + (500,000 tons x $0.04 per ton)]. The actual effective date of primacy is uncertain and, therefore, it is estimated that FY17-18 revenue will be $32,500.
- According to TDEC, the department is estimated to receive a one-time increase of federal funding of $1,145,808 in FY17-18, and a recurring increase of federal funding of $975,468 beginning in FY18-19.
- Based on information provided by TDEC, all fee revenue and federal funding received by TDEC will be deposited to the Coal Mining Protection Fund (CMPF).
- The total increase in state revenue to the CMPF in FY17-18 is estimated to be $1,266,133 ($49,425 + $38,400 + $32,500 + $1,145,808); in FY18-19 and subsequent years is estimated to be $1,216,118 ($98,850 + $76,800 + $65,000 + $975,468).
- TDEC will require appropriations from the General Fund (GF) for the purpose of funding new required positions.
- TDEC reports that six new positions will be required in FY15-16, resulting in a recurring increase in state expenditures from the GF of $522,758.
- TDEC reports that an additional 21 positions will be required in the last half of FY16-17. The recurring increase in state expenditures from the GF for these positions beginning in FY17-18 is estimated to be $1,492,849; the increase in state expenditures from the GF in FY16-17 (for the half-year impact) is estimated to be $746,424 ($1,492,849 x 50% for half-year impact).
- The total increase in state expenditures for a total of 27 TDEC positions from the GF in FY16-17 is estimated to be $1,269,182 ($522,758 + $746,424); the total recurring increase in state expenditures for the 26 total TDEC positions from the GF beginning in FY17-18 is estimated to be $2,015,607 ($522,758 + $1,492,849).
- In FY17-18, based on the information received from TDEC, it is estimated that there will be a one-time increased state expenditure of $340,680 for equipment, supplies, and vehicles, for a total increase in state expenditures from the GF in FY17-18 of $2,356,287 ($2,015,607 + $340,680).

Assumptions relative to the Attorney General:

- According to the information received from the Attorney General (AG), this bill would require AG's Office to review rules promulgated by TDEC and handle any litigation matters on their behalf, requiring one additional attorney; funding for such position will require an appropriation of funds from the GF; the recurring increase in state expenditures from the GF beginning in FY17-18 is estimated to be $140,300.

Assumptions relative to Class E Felonies:

- The proposed legislation creates several Class E felony offenses for a person who: knowingly violates a condition of a permit issued under this Act or fails to comply with any orders issued; willfully and knowingly falsifies or fails to make any statement, representation, or certification in any records, information, plans, specifications, or other data required by the Board or TDEC; knowingly violates the conflict of interest provision; knowingly engages in surface coal mining and reclamation operations without a permit; or knowingly prevents or impedes an employee of this state from performing the employee's duty under this Act.
- According to the Department of Corrections (DOC), per the National Pollutant Discharge Elimination System (NPDS) compliance summary, there have been three notices of permit expiration to the Jim Justin Mines in Tennessee since 2011.
- Based on the information received from DOC, one additional Class E felony is estimated to occur every other year for persons operating in surface coal mining and reclamation operations without a permit.
- It is assumed that each offender will serve the same time as an average Class E felony (1.41 years).
- Population growth and recidivism discount factors do not apply because of the low number of admissions affected by this provision of the bill.
- According to the DOC, the average operating cost per offender per day for calendar year 2015 is $66.03.
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on 0.5 offenders serving 1.41 years (515 days) for a total of $34,005 ($66.03 x 515 days). The cost for 0.5 offenders is $17,003 ($34,005 x 0.5).
- The first year for incarceration impacts is estimated to be FY18-19.

*Tennessee Code Annotated, Section 9-4-210, requires that: *For any law enacted after July 1, 1986, which results in a net increase in periods of imprisonment in state facilities, there shall be appropriated from recurring revenues the estimated operating cost of such law. The amount appropriated from recurring revenues shall be based upon the highest cost of the next 10 years.*

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

Jeffrey L. Spalding, Executive Director

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